

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the
Certificate of Authority
of Family Service Life
Insurance Company, a
Texas Corporation.

ORDER GRANTING MOTIION
FOR SUMMARY DISPOSITION

The above-entitled matter came on for oral argument before Steve M. Mihalchick, Administrative Law Judge on December 5, 1989, pursuant to the Department of Commerce's (Department) Motion for Summary Judgment. The record on the motion remained open until December 27, 1989, when the last brief was filed.

Alan Gilbert, Assistant Attorney General, and Carolyn Ham, Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101 appeared on behalf of the Complainant, Department. John French, James Loken and James Steffen, Faegre and Benson, 2200 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 55402-3901 appeared on behalf of the Respondent, Family Service Life Insurance Company (Respondent or Familco).

Based upon the record herein, and for the reasons set forth in the following Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge respectfully recommends to the Commissioner of Commerce that the Department's Motion for Summary disposition be GRANTED.

Dated: January 26, 1990.

STEVE M. MIHALCHICK
Administrative Law Judge

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record which

may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. 14.61, the final decision of the Commissioner of Commerce shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner of Commerce. Parties should contact Thomas Borman, Commissioner, Minnesota Department of Commerce, 133 East 7th Street, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped (No. 8208). Not transcribed.

MEMORANDUM

On October 6, 1989, the Commissioner of Commerce issued and served a Notice of and Order for Hearing and Order to Show Cause (Notice of Hearing) upon Famlico. The Notice of Hearing alleged that Famlico was offering a prearranged funeral plan funded through life insurance policies and annuity contracts issued by Famlico that was not in compliance with the law in certain respects and that a certain document connected with the plan had not been filed with the Department. Based on these allegations, the Notice of Hearing alleged that Famlico (1) violated the provisions of Minn. Stat. 72A.325 (1988), (2) engaged in fraudulent and dishonest practices in violation of Minn. Stat. 72A.20, subd. 18 (1988) and (3) failed to comply with the filing and approval requirements of Minn. Stat. 61A.02 (1988) and was therefore subject to discipline and civil penalties pursuant to Minn. Stat. 45.027, subds. 6 and 7 (1988).

The Department has now moved for summary judgment on the basis that the insurance contracts sold by Famlico on their face violate Minn. Stat. 72A.325 and that as a matter of law the Department is entitled to summary judgment. The Department stipulated at oral argument that if it prevailed on its motion with regard to a violation of Minn. Stat. 72A.325, it would not pursue the other allegations in the Notice of Hearing regarding violations of Minn. Stat.

72A.20, subd. 10, and Minn. Stat. 61A.02. Famlico asserts that the contracts of insurance, as advertised, sold and honored, do not violate the statute, that genuine issues of material fact exist, and that summary judgment denies it its due process right to a hearing.

Propriety of Summary Disposition

Famlico suggests that there is no authority for an Administrative Law Judge to grant summary judgment under the contested case procedures of the

Minnesota Administrative Procedure Act, noting that the Act expressly grants all parties an opportunity for hearing after reasonable notice. Minn. Stat. 14.58. They also suggest that because the purpose of this proceeding is to

determine whether the Commissioner should revoke or suspend Famlico's certificate of authority to transact insurance business in the state, it has a constitutional right to a hearing under the due process clauses of the United States and Minnesota Constitutions. Respondent's Memorandum 1-2. Famlico is, indeed, entitled to a hearing, but where there are no facts in dispute, a trial-type hearing is not required. Where no genuine or material issue of fact is presented, a court or administrative body may pass upon the issues of law after according the parties the right of argument. In the Matter of a Complaint of People's Cooperative Power Association, Inc., 447 N.W.2d 11 (Minn. App. 1989), citing K. Davis, Administrative Law Text at 159 (3d Ed. 1972).

Under Minn. Rules 1400.5500 K, one of the duties of an Administrative Law Judge in a contested case is to recommend summary disposition of the case or any part thereof where there is no genuine issue as to any material fact. Summary disposition is equivalent to summary judgment under the Rules of Civil Procedure, except that the determination of the Administrative Law Judge is a recommendation to the agency making the final decision rather than an order granting or denying the motion. The terms are sometimes used interchangeably in administrative proceedings and the rules of law applying to summary judgments are applied to summary dispositions. Thus, the evidence must be considered in the light most favorable to the non-moving party, Sauter v. Sauter, 70 N.W.2d 351 (Minn. 1955), and the party defending the motion must present "specific facts showing there is a genuine issue for trial", Minn. R. Civ. P. 56.05. A genuine issue is one which is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case. Highland Chateau v. Minnesota Department of Public Welfare, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984). The moving party, in this case the Department, has the burden of proof. The decisionmaker's opinion as to the chance of a party prevailing at a hearing is not a proper criterion for whether or not to grant summary judgment. The decisionmaker's function is not to resolve fact questions but to determine whether or not issues of fact exist. Anderson v. Mikel Drilling Company, 102 N.W.2d 293 (Minn. 1960).

The language of the documents involved in this matter is not in dispute. The meaning of the words used in the documents, and, in particular, the term "personal representative", is hotly contested.

SCI's Prearranged Funeral Program

In 1983, Famlico applied to the Department for a certificate of authority to do business as a life insurance company in the state. Famlico is a subsidiary of Service Corporation International (SCI). SCI is the largest funeral service firm in North America and as of 1987 owned 406 funeral homes, 120 cemeteries, 74 flower shops, two casket manufacturing facilities, 22 facilities for manufacturing funeral supplies, 3 insurance companies, a trust company and other related businesses. Ham Affidavit, Attachment 1 at 1. One of SCI's subsidiary corporations is Guardian Plans, Inc.. SCI, through its

subsidiaries, markets a prearranged funeral program known as the GUARDIAN
PLAN

PROGRAM (the Program), which is funded through life insurance policies and
annuity contracts issued by Famlico.

The Program is initially marketed through direct mail or multi-media advertising. Interested prospective customers are visited in their homes by a licensed insurance agent of Famlico, who is referred to by SCI as a "Prearranged funeral counselor". Id. at 2. The prospective customer selects a funeral home from a list provided by the agent. Some of the funeral homes on the list are owned by SCI; others are not owned by SCI, but participate in the program. The customer also receives a list describing the goods and services offered by the funeral home selected and the current prices of those goods and services. The customer then selects the goods and services desired for the funeral. The customer does not actually purchase the funeral goods and services at the time, but makes a "funeral prearrangement", selecting the funeral home, goods and services desired. The customer then applies to Famlico for a life insurance policy or annuity with a face value equal to the current price of the selected funeral. The customer designates a policy beneficiary and then executes a revocable assignment of the policy's death benefits to GPI. Under the assignment, GPI, generally, agrees to secure performance of the goods and services selected by the customer from the designated funeral home or from a funeral home that will provide substantially similar goods and services if the designated funeral home is no longer in business at the time of the customer's death. Id. at 3. Funeral homes participating in the program will have already agreed to provide the goods and services at that price.

Under the Assignment of Insurance or Annuity Proceeds form (Assignment) used in Minnesota, Ham Affidavit, Attachment 2, Dixon Affidavit, Ex. I, GPI undertakes the following responsibilities ("You" and "your" refers to GPI and "I" and "my" refers to the customer):

Your Responsibilities

- A. You will not request payment of the life insurance or annuity policy death benefit until the funeral goods and services have been satisfactorily provided.
- B. After you receive the death benefit, you will pay it over to the funeral home that provided the goods and services.
- C. You will ensure that any funeral home participating in the GUARDIAN PLAN program will provide the goods and services and honor this agreement.
- D. If the funeral home fails to honor this agreement, you will be responsible for ensuring that the funeral goods and services are provided. If I or my personal representative are not satisfied with the substitute arrangements, you will instead pay me or my personal

representative a refund. The refund amount will be equal to the premiums I paid on the policy, minus the cash surrender value of the policy. I understand that this refund will satisfy all claims I may have against you or the funeral home for failure to perform.

E. If you receive written notice of my cancellation of this agreement, you will notify the insurance company.

A primary benefit of the Program is that it locks in the cost of the funeral at the time the policy is issued.

In an effort to comply with the freedom of choice provisions of Minn. Stat. 72A.325, the Assignment is revocable. Dixon Affidavit, paragraph 7. The Assignment contains the following relevant provisions:

3.C. I may cancel this agreement at any time before the funeral goods and services are provided. If the policy insures my life, my personal representative may cancel this agreement before those funeral goods and services are provided. Any cancellation must be in writing.

12. If I die my estate is bound by this agreement, unless it is cancelled by my personal representative before the funeral goods and services are provided.

13. All notices must be given in writing. They must be hand delivered or mailed to the address given above.

Statutory Restrictions on Funeral Insurance: the Freedom of Choice Provision

Prior to 1981, Minn. Stat. 72A.321 (1980) provided:

No insurance company shall be operated directly or indirectly in affiliation or connection with any funeral director or funeral establishment, nor shall an insurance company contract, by assignment or otherwise, to pay insurance or its benefits, or any part of either, to any funeral director or funeral establishment predetermined or designated by it, so as to deprive the family or representatives of the deceased policyholder from, or in any way to control them in, obtaining for his funeral and burial, funeral services and supplies in the open market.

This provision had first been enacted in 1933, Minn. Laws 1933, Ch. 73, and went through a non-substantive change in 1967, Minn. Laws 1967, Ch. 422, I and 13.

In 1981, Minn. Stat. 72A.321 was repealed and a new Minn. Stat. 72A.325 was adopted in its place, which provided as follows:

No insurance company doing business in this state providing benefits for the payment of any funeral or burial expense, shall designate any mortician, funeral director, funeral establishment, cemetery, or any other party offering funeral or burial services or supplies, as the beneficiary or recipient of the benefits, so as to

deprive the family, next of kin, or other representative of the deceased policyholder of the right to select the funeral or burial services and supplies of their choice. No owner, director, or employee of a funeral establishment shall receive any agent's fee, commission or other reimbursement on any insurance sale facilitated through the funeral establishment.

No owner, director or employee of a funeral establishment, nor trade association of funeral establishments shall receive any fee for endorsing insurance policies, plans or services. A trade association may not receive payment other than reimbursement for reasonable expenses of administering such a policy or services.

Minn. Laws 1981, Ch. 129, I and 2.

The 1981 legislative debates indicate that the primary purpose behind the new law was to allow the marketing of low-amount funeral insurance in Minnesota that could be recommended by funeral directors and their trade association, the Minnesota Funeral Directors Association. Ham Affidavit, Attachment 9 at 14-20. At the same time, according to Senator Sikorski, the Senate author, the new law guaranteed that those policies would not select or name a particular funeral home, association, mortician or individual as beneficiary. Ham Affidavit, Attachment 9 at 73.

In 1987, Minn. Stat. 72A.325 was amended as follows:

agent No insurance company doing business in this state

Or other person engaged in the business of providing insurance or benefits for the payment of any funeral or burial expense, shall designate, endorse, or otherwise promote any particular mortician, funeral director, funeral establishment, cemetery, or any other party offering funeral or burial services or supplies, as the beneficiary or recipient of the benefits, so as to deprive the family, next of kin, or other representative of the deceased policyholder of the right to select the funeral or burial services and supplies of their choice. No owner, director, or employee of a funeral establishment, or entity having a direct equity interest in a funeral establishment, shall receive any agent is fee, commission, or other reimbursement on any insurance sale facilitated through the funeral establishment.

No owner, director, or employee of a funeral establishment, nor trade association of funeral

establishment shall receive any fee for endorsing insurance policies, plans, or services. A trade

EDITOR'S NOTE original has language that is stricken out could not be converted to this program.

Minn. Laws 1987, Ch. 233, 1.

The Senate author of the 1987 legislation described the bill in hearings as non-controversial, consumer oriented and industry supported. Ham Affidavit, Attachment 9 at 59. He stated that current law prohibited an insurance company from designating a particular mortician or funeral home and that the bill did not change that long-standing provision. Rather, it merely added agents and other persons engaged in selling insurance to those who could not designate or endorse a specific funeral home. Ham Affidavit, Attachment 9 at 61-62. A representative of the Minnesota Funeral Director's Association testified twice before the hearings that the current law did not restrict agents for the insurance companies from designating, endorsing or promoting one particular funeral home as a policy beneficiary and that the amendment would clarify that and simply make clear that present intent of the existing law. Ham Affidavit, Attachment 9 at 55-56 and 66-67.

While the 1987 amendments were being discussed, SCI became concerned that the amendments would cast doubt upon Famlico's compliance with the statute. A meeting was held among the Senate sponsor, counsel for the Department, attorneys for SCI and three representatives of the Minnesota Funeral Director's Association. The attorneys expressed concern that adding the words "endorse or otherwise promote" and "particular" would result in Famlico being accused of violating the statute. Counsel for the Department responded that the Department had exclusive jurisdiction to enforce the statute, that Famlico would be in compliance with the statute as long as the plan was marketed in the manner described to the Department and that the changes to the statutory language would not affect compliance. Hentges' Affidavit, para. 2 and 3.

On February 21, 1989, the Deputy Commissioner of the Department advised attorneys for Famlico that the Department would be proposing certain amendments to 72.8235 in the 1989 session of the Legislature. Their proposal would have done several things, including deleting the "so as to deprive" clause and inserting language that would prohibit promotion or facilitation of assignment of the benefits under a policy to an affiliate. Hentges' Affidavit, Ex. C. Because it appeared that the proposed amendments would cause Famlico to be in violation of the statute, SCI and Famlico asked their attorneys to lobby the Legislature in opposition to the Commissioner's amendments. The Commissioner's amendments were included in the Commissioner's 1989 omnibus life and health insurance bills, H.F. 1155 in the House and S.F.

1171 in the Senate. The House Committee on Insurance passed out a bill containing the Commissioner's amendments, but on the floor of the House the bill was amended in a manner Famlico thought to be favorable and, so amended, passed the House. The Senate passed a bill containing the Commissioner's language. The two inconsistent bills went to conference committee and neither was enacted by the 1989 Legislature. The amendment made on the floor of the House, apparently at the urging of Famlico's lobbyists, would have resulted in

a statute that prohibited insurance companies and their agents from causing a provider of funeral services and goods to be the beneficiary or recipient of benefits under a life insurance policy, unless the policyholder and the representative of a deceased policyholder remained free to choose a different provider of funeral or burial services or supplies at any time before the services or supplies were provided. Hentges' Affidavit, 19 and Exhibits D, E and F.

Interpretation of Minn. Stat. 72A.325

In offering the Program, Famlico and its agents clearly designate, endorse and promote particular funeral establishments as the recipient of the policy benefits. Famlico's agents provide the prospective customer with a list of funeral establishments participating in the program and the customer selects from that list. In the normal course, the policy benefits are paid to

that funeral home. In its Motion for Summary Disposition, the Department asserts that nothing further is required to show a violation of Minn. Stat.

72A.325. Department's Memorandum at 7 and Department's Reply at 1. Famlico

argues that the "so as to deprive" clause of the statute cannot be ignored and

that it must be shown that the designation, endorsement or promotion is such as to deprive the family, next of kin, or other representative of the deceased

policyholder of the right to select the funeral or burial services and supplies of their choice. Respondent's Memorandum at 12, Respondent's Reply at 1.

Minn. Stat. 645.16 states, in relevant part:

The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law should be construed, if possible, to give effect to all its provisions.

When the words of the law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.

The statute goes on to state that when the words of the law are not explicit, the intention of the Legislature may be ascertained by considering several specified matters, including the contemporaneous legislative history. Under Minn. Stat. 645.16, we are not free to ignore the "so as to deprive" qualifying clause. The statute must be read as a whole. Thus, some sort of deprivation of the right to select the funeral home, goods and services must be shown to prove a violation of Minn. Stat. 72A.325. The words of the statute are fairly clear and there is no need to examine the legislative history on this particular point.

The degree of deprivation necessary requires some further examination. Actual deprivation of choice is not required because that would render the words "endorse or otherwise promote" added by the 1987 Legislature meaningless. Again, that is inappropriate under Minn. Stat. 645.16.

Despite comments at the legislative hearings at the time that this change was

a mere clarification, it is clear that the terms endorse and promote are broader and encompass more and different actions by insurance companies and agents than the word designate. It is clear from the testimony that the Minnesota Funeral Directors Association did not want insurance companies and agents pushing customers toward certain funeral directors and that they proposed the legislation to move the law in that direction.

Moreover, actual deprivation is probably a legal impossibility. The general rule, almost universally applied, is that the family, next of kin, or

other persons close to the deceased are entitled to select the type of service, location and ceremonial details associated with the funeral. Sacred

Heart of Jesus Polish National Catholic Church v. Soklowski, 199 N.H. 81, 82 0LQQ ,Q DOVR \$ \$P -XU G 'HDG %RGLHV 21-34; 25A C.J.S. Dead Bodies 3. The right to choose originates from the deceased's wishes and descends to those of the surviving spouse and then to the next of kin, by degree of kinship modified by circumstances of intimacy and associations. Sacred Heart, 199 N.W., at 82. Friends of the deceased may take precedence

over next of kin, in certain circumstances.' The personal representative of the estate of a decedent has no right of choice superior to the family, next of kin or other representative of the deceased, absent specific instructions in the will. 5C Dunnell's Minnesota Digest, Dead Bodies VHH DOVR Koerber v. Patek, 102 N.W. 40, 46 (Wis. 1905). Minn. Stat. 72A.325 recognizes these important rights and is designed to protect them.

Reading the statute as a whole, recognizing the importance of the right of a family, next of kin or other representative of the deceased to make the funeral choices and considering the legislative history, it would appear that

the "deprivation" prohibited by Minn. Stat. 72A.325 must be such that such

representatives are not fully informed of or misled as to their right to make

such choices or unreasonably coerced into not making the choice they would prefer.

Is There a Deprivation of the Right to Choose in This Case?

Famlico argues that its contract of insurance and assignment does not force families or next of kin to choose between desired funeral services and

A hypothetical example of such a situation is provided in Koerber v.

Patek, 102 N.W. 40, 46 (Wis. 1905), which suggests that the right to choose the appropriate burial service would lie with the foster family of a child without close relatives. A similar situation, although relating to disinterment, was resolved in Koon v. Doan, 2 N.W.2d 878 (Mich. 1942), where, 13 months after their father's death, his children sought to remove the remains from Michigan to California. Noting that the decedent had formed a close, almost familial relationship with the persons who buried his remains (including his fiancée), the Michigan Court held that remains should not be disturbed.

payment for those services, because its assignment may be revoked and the insurance proceeds used elsewhere. The express language used in the Assignment places the right to revoke with the deceased's "personal representative". Family, next of kin, or other representatives are not mentioned.

The Department argues that the use of the term "personal representative" in the Assignment is sufficient to establish a deprivation as a matter of law. Department's Memorandum at 10, Department's Reply at 6. The Department's argument is based on the premise that the term means the personal representative of the estate of the decedent. Since personal representatives of an estate are virtually never appointed until after the funeral of the decedent, the argument goes, the power of the personal representative to revoke the Assignment after the death of the decedent is a sham. Famlico argues that the term personal representative as used in the Assignment is ambiguous and that its intention in using the term was to encompass family and next of kin. Respondent's Memorandum at 19. It offered the affidavit testimony of SCI's Vice President/Senior Attorney that the term was intended to include the family or next of kin as well as a duly appointed "personal representative". Dixon Affidavit, paragraph 10. Various forms of the Assignment used in other states and drafts of the form to be used in Minnesota used terms such as "duly authorized legal representative", "my next of kin or personal representative" and "your family or personal representative". Moreover, Famlico has offered the affidavit testimony of the manager of a participating funeral home in Minnesota that the family's choices, not those made by the decedent at the time of the prearrangement, control, and of its vice president for operations that a family at the time of need has complete freedom to use the proceeds of the insurance at a funeral home other than the one selected by the decedent. Larkin Affidavit and Gaisbauer Affidavit. It is assumed for purposes of this motion that the families, next of kin, and other representatives of the decedents do have the option to change funeral arrangements or revoke the Assignment and use the proceeds of the policy in any manner they choose, regardless of the fact that the Assignment uses the term "personal representative."

It should first be noted that it may not be appropriate to allow Famlico to claim that a term in a contract drafted by its parent corporation's senior attorney is ambiguous. Contracts are construed against the drafter and it would seem that SCI has an obligation to draft an Assignment that unambiguously complies with the law.

Moreover, when used in the context of death and estates, as it is in the Assignment, the term "personal representative" is not ambiguous; it has a common meaning that would be understood by most people encountering it. One definition of "personal representative" is found under the listing

representative in Blacks Law Dictionary. That definition states:

"Executors

and administrators of person deceased; but it may have a wider meaning, according to the intention of the person using it, and may include heirs, next

of kin, descendants, assignees, grantees, receivers, and trustees in insolvency." Black's Law Dictionary 1466 (4th ed. 1951). That definition

somewhat supports Famlico's argument that "personal representative" is ambiguous, but indicates that the most common meaning is personal representative of the estate. Other definitions are more precise. "The settlement of a decedent's estate is confided to an executor or administrator, who is termed the "legal representative" or "personal representative" of the deceased 77 C.J.S. Representative, at 262 (1952). "'Personal representative' includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. 'General personal representative' excludes special administrator." Minn. Stat. 524.1-201(30) (1989). See, also, Willoughby v. St. Paul German Ins. Co., 80 Minn. 432, 83 N.W. 377 (1900). The Administrative Law Judge concludes that the term "personal representative" when used in a context of a individual's death, as here, means the person appointed to administer the estate, not the representative of the decedent having the power to arrange the funeral.

If the term were ambiguous, it would be appropriate to consider the intent of the parties to the contract. Davis by Davis v. Outboard Marine Corp., 415 N.W.2d 719, 723 (Minn. App. 1987). But, SCI's intent alone cannot be considered. What is the intent of all the persons who bought or will buy the Famlico policies and execute the Assignment? For the same reasons cited above in concluding that the term is not ambiguous, it can be said that, as a matter of law, most of the customers buying the policy would intend the term to mean personal representative of their estate.

Even if Famlico's intended meaning were adopted, it would extend, at most, to family and next of kin. This interpretation would still be insufficient to bring the language of the assignment within the bounds of 72A.325. The statute protects the right to choose of "family, next of kin, or other representative." As discussed above, an acquaintance of the decedent may acquire the right to choose when the next of kin are distant or uninterested. Koon v. Doan, 2 N.W.2d 878 (Mich. 1942). The revocation provision of Famlico's assignment does not protect the right to choose belonging to such other representatives.

Finally, even if the term "personal representative" had the meaning ascribed to it by Famlico and SCI, it must be concluded that a significant number of family members, next of kin or other representatives would, upon seeing the language in the Assignment or being informed that the Assignment could be cancelled by the personal representative, believe that they had no such authority. They would conclude that the decedent's prearranged choices were binding upon them or would, at least, be dissuaded from inquiring if a

change was possible. They would not be able to freely evaluate whether the prearranged services were consistent with their desires and whether the possible cost savings to them or the estate by following the prearrangement outweighed their personal desires. They would, in effect, have been misled as to what their rights actually were and their free choice would have been unreasonably affected. The fact that the Program is actually administered to provide such free choice is immaterial in light of the express language used in the Assignment.

Conclusion

Taking the facts in the light most favorable to Famlico, Famlico has not shown that a genuine issue of material fact exists. Applying the pertinent statutes and case law, the language used in Assignment on its face does not permit a revocation by family, next of kin or other representatives and significantly impairs the right of family, next of kin, or other representative to choose the funeral home, goods and services. It may also mislead such representatives about such right to the extent that they are deprived of that right in violation of Minn. Stat. 72A.325. Summary disposition in favor of the Department is, therefore, appropriate.

The Administrative Law Judge certainly understands the difficulties of drafting a clear and concise document and laboring over every word. Yet, it would seem that there are a number of terms that could be used in the Assignment that would not be objectionable under the statute and would, at the same time, allow Famlico to market the Program on a national basis and carry out its stated intent of allowing freedom of choice, at least in Minnesota. The statutory term "family, next of kin or other representative of the deceased" is an obvious choice. "Representative" is probably acceptable. A term such as "the person making my final funeral arrangements" may be the best of all. But, as discussed above, the term "personal representative" or even "legal representative", has specific meaning in the context of a person's death which is narrower than allowed by Minn. Stat. 72A.325.

S.M.M.